Gerahty, J.:—The Appellant in this case was charged before the First Magistrate, Ipoh, under Section 111 (a) of the Customs Enactment, 1923, in being concerned in the importation of restricted goods.

He was acquitted and discharged by the Magistrate on the ground that the defence negatived any question of the accused's complicity in the importation of these goods and that the words "concerned in" must mean some active participation or at least acquiescence in the offence alleged.

The prosecuting officer then applied for forfeiture of the goods under Section 116 (ii) as amended by Enactment 7/32, whereupon the learned Magistrate ordered the forfeiture of the goods in question. It is against this order that the present appeal has been brought. In his grounds of judgment the Magistrate sets out the facts as follows:—

> "The facts in this case are sufficiently proved, and indeed are not disputed by the defence. Chop Fuk Shun, a Chinese retail firm of Ipoh ordered in Ipoh certain goods from Wo Yu & Company a wholesale firm in Penang, through the latter's agent, Kam Loi. The goods were partly dutiable and partly not liable to duty. The dutiable goods were mostly sent by rail; but 5 cases of non-dutiable goods were sent by road. Out of these 5 cases, one was found to contain dutiable goods, packed with the non-dutiable goods. Goods so packed are under Rule 71 under the Customs Enactment, restricted goods, and the accused, the acting manager of Chop Fook Shun, was charged under Section 111 (a) with the offence of being 'concerned in the importation of restricted goods."

It has been argued by Counsel for the Appellant that under Section 111 of the Customs Enactment 1923, goods in respect of which a charge has been made are not liable to seizure and thus not to forfeiture under Section 116 save only on and after conviction of the person charged. It is further contended that neither the appellant nor any other person has committed an offence in respect of the goods in question and therefore that the provisions of Section 116 as amended by Enactment 7/32 do not apply.

This section reads as follows:—

> 7. Section 116 of the principal Enactment is amended by adding thereto a new sub-section as follows:
> "(ii) An order for the forfeiture of goods may be made if it be proved to the satisfaction of the Magistrate that an offence against this Enactment has been committed and that the goods were the subject matter of or were used in the commission of the offence notwithstanding that no person may have been convicted of such offence."

It appears to me to be quite clear on perusing the record and the grounds of judgment of the Magistrate, and from an examination of the provisions of Section 111 (a) that the Magistrate was satisfied, and rightly so, that there has been in this case an importation of restricted goods contrary to the provisions of that section, but that he was not satisfied that the present appellant was "concerned in" that importation. That finding does not in my opinion remove the taint from the goods themselves, but merely removes the personal liability of the appellant.

It seems to me it was to meet just such a case as this that the amendment to Section 116 was enacted. The amended section when read together with Section 111, in my view, confers upon the Magistrate all such powers in regard to the forfeiture of the goods as he might have exercised had some person been convicted of an offence in relation thereto.

In my opinion the order for forfeiture made by the Magistrate in this case is correct in fact and in law and accordingly I dismiss the appeal.

Appeal dismissed

(Original Criminal Jurisdiction)

McFall, J.

February 9, 1933.

PUBLIC PROSECUTOR vs. KHADIJAH BINTI MAT SIAK.

(Selangor Criminal Trial No. 71 of 1932).

Penal Code, Section 494—Selangor Muhammadan Marriage and Divorce Registration Enactment, 1930, Section 3—Persons competent to celebrate marriages.

In the State of Selangor marriages under the Mohammadan Marriage and Divorce Registration Enactment, 1930, must be celebrated by a person appointed for that purpose by His Highness the Sultan or celebrated by the wali of the woman to be wedded and no other person. It is illegal for a wali to appoint anybody, other than a person appointed by His Highness, to celebrate the marriage of the woman of whom he is the wali.

R. C. Cussen, Deputy Public Prosecutor, for the Public Prosecutor.

Accused in person.

McFall, J.:—In this case Khadijah binti Mat Siak, the accused, is charged that she on or about the 19th day of September, 1932, at Salak in the District of Ulu Langat in the State of Selangor, having a husband—to wit—Gudang bin Mat Chili living, married again one Abdul Manan bin Radang, which marriage is void by reason of its taking place during the life time of such husband—to wit—Gudang bin Mat Chili, and has thereby committed an offence punishable under Section 494 of the Penal Code.

The evidence given is that Gudang, the complainant, married the accused about three years ago. No certificate of this marriage has been produced in evidence. Gudang says that he married the accused,

and he subsequently took steps to divorce the accused, and the accused in her statement to the Magistrate at the preliminary enquiry did not deny the first marriage. On the 6th April, 1930, Gudang divorced the accused with two talaks, revocable, but on 8th May 1930, he got the divorce annulled and went to stay with the accused. A child was born; Gudang subsequently left the accused. Subsequently a letter marked in this case as Exhibit C was received. Gudang denies Exhibit C, which amounts to a divorce, as his letter. In the meantime the accused had gone away with a man called Abdul Manan bin Radang to Port Dickson. After about a year Abdul Manan and the accused return to her father's house at Salak, arriving there on the 18th September, 1932. The Kathi of the mosque at Salak, Haji Ibrahim bin Sutan Manser, appears to have interfered in the relation of these parties, accused and Abdul Manan, and advised that these relations should be regularised. There was considerable talk, and on the next day the father of the accused, Mat Siak, who is the wali of the accused gave permission to Haji Ibrahim to celebrate a marriage between the accused and Abdul Manan. Now Haji Ibrahim in his evidence had admitted that he has no authority from the Sultan of Selangor to celebrate marriages, neither is he himself the wali of the accused. The question then arises whether this form of marriage through which the parties went on the 19th September, 1932, is a legal form or not.

By the Enactment No. 1 of 1930, State of Selangor it is provided in Section 3 that His Highness the Sultan may appoint persons to celebrate marriages between Muhammadans and may also appoint persons to be Registrars of Marriages and Divorces within and for the localities specified in the letters of appointment and may cancel such appointments. The marriages shall be celebrated only by persons authorised in that behalf by His Highness the Sultan, provided that when there is a wali (lawful guardian) of the woman to be wedded present, it shall be lawful for such wali to celebrate the marriage. Any person appointed to celebrate marriages under Section 3 (i) may at the request of the wali (lawful guardian) of the woman to be wedded perform the marriage ceremony, but before celebrating such marriage he shall make full enquiry in order to satisfy himself that there is no lawful obstacle to the marriage of the woman to be wedded and shall not perform the ceremony until he is so satisfied. That is to say that this law provides that marriages in the State of Selangor must be celebrated by a person appointed for that purpose by His Highness the Sultan or by the wali of the woman to be wedded and by no other person. The wali may request another to act for him, but that other must be a person appointed to celebrate marriages by His Highness the Sultan. It appears to be illegal for a wali to appoint anybody, other than a person appointed by His Highness the Sultan, to celebrate the marriage of the woman of whom he is the wali. In this opinion the Court is somewhat fortified by Section 12 which reads that "any person other than the lawful guardian of the woman to be wedded celebrating a marriage without the authority of His Highness the Sultan under Section 3 (i) hereof shall be liable, on conviction, to a fine not exceeding one hundred dollars."

In this case the Court is of opinion that Haji Ibrahim has not been appointed by His Highness the Sultan to celebrate the marriages of Muhammadans in this State, that Mat Siak the wali should not have employed him for that purpose. As he did employ him Haji Ibrahim celebrated the marriage on the 19th September, 1932, between the accused and Abdul Manan. The Court holds that Haji Ibrahim had no power or rights to celebrate that marriage; that marriage or that form of marriage then had, and could have, no validity whatsoever between accused and Abdul Manan or between any Muhammadan man and woman who being legally entitled to marry each other went through that form. The consequence is that the accused did not on the 19th September 1932, marry again one Abdul Manan, as charged, and the charge against the accused is not proved; she is therefore entitled to an acquittal.

The order of the Court is that the accused be acquitted and discharged.

Accused acquitted.